

PLM-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Claim For Retroactive Temporary Promotion and Back Pay 9864]

FILE: B-193690

DATE: April 19, 1979

MATTER OF: Esther V. Smith

DIGEST: Employee of the United States Army was assigned to position of GS-7. Upon assignment employee, in addition to her duties, began to perform the duties of File Procurement Officer. During time in question para. 2-1.d(3)(a) of AR 381-45 stated that Army Commanders could appoint as File Procurement Officers civilian employees GS-9 or above. Claim for a retroactive temporary promotion and accompanying back pay is denied as this is a question of classification which is within the sole jurisdiction of the employing agency and the Civil Service Commission and this Office lacks authority to consider propriety of classification actions. Also, there is no substantive right to back pay for periods of wrongful position classification. United States v. Testan, 424 U.S. 392 (1976).

By letter of July 18, 1978, Ms. Esther V. Smith, a retired employee of the United States Army Air Defense Center and Fort Bliss, appeals a settlement issued by our Claims Division on July 12, 1978, denying her claim for a retroactive temporary promotion and accompanying back pay.

In May 1971, Ms. Smith was assigned to the position of Personnel Security Specialist (Typing), GS-080-7. Ms. Smith states that she then began to perform the duties of File Procurement Officer for Directorate of Security, never relinquishing these duties until her retirement for a disability on October 15, 1975. During the time in question paragraph 2-1.d(3)(a) of AR 381-45, July 30, 1968, provided that the Commanders of Army Commands and agencies authorized to request certain investigatory dossiers would designate not less than two and not more than four officers (commissioned or warrant) or civilian employees GS-9 or above, as file procurement officers.

In November 1973, a desk audit was conducted of Ms. Smith's position by Position and Pay Management, Civilian Personnel Office. This audit resulted in a rewrite of claimant's job description to include the position of File Procurement Officer. The final classification, however, did not result in an upgrading of the position. Ms. Smith contends that notwithstanding the desk audit she is entitled to a retroactive temporary promotion to grade GS-9 and accompanying back pay in light of the above Army Regulation.

005009

From the beginning this case appears to have been a dispute over the proper classification of a position. There is no doubt that Ms. Smith performed the duties of a File Procurement Officer. However, it is also clear that these duties were performed in relation to her other existing duties. Ms. Smith may have been performing duties of a grade at a higher level, but such a determination was for the Civil Service Commission (CSC) or the Civilian Personnel Office to make. Matter of David A. Webb, B-190695, July 7, 1978. As was stated above, the Civilian Personnel Office made the decision not to upgrade Ms. Smith's position but rather include the duties of a File Procurement Officer in her existing position. Moreover, we have been informed that the position of File Procurement Officer has always been a GS-7 and there has never been a GS-9 in the Directorate of Security. DLG00072

Under the provisions of 5 U.S.C. 5105 (1970), the CSC has the authority and responsibility for the preparation and publication of standards for classification of positions subject to the General Schedule. The CSC is also required to review agency classification actions and correct such actions which are not in accordance with published standards. 5 U.S.C. 5110 (1970). The CSC correction certifications are binding on all administrative, certifying, payroll, disbursing, and accounting officials.

The proper course of action for Ms. Smith to follow would have been to appeal the classification of her position to the CSC. See 5 C.F.R. Part 511, Subpart F (1977); Matter of Edward Rothenberg, B-187234, December 8, 1976. When a position is reclassified by CSC, the effective date is not earlier than the date the certificate granting the reclassification is received by the agency. Therefore, the higher salary rate would not be retroactively effective. United States v. Testan, 424 U.S. 392 (1976).

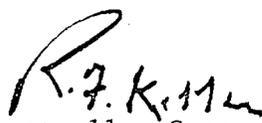
In United States v. Testan, the Court also reaffirmed the rule that one is not entitled to the benefit of a position until the person has been duly appointed to it, citing Ganse v. United States, 180 Ct. Cl. 183 (1967); United States v. McLean 95 U.S. 750 (1878). There is no claim that the employee has been denied the benefit of a position to which she was appointed. The claim, instead, is that she has been denied the benefit of a position to which she should have been but was not appointed.

The general rule is that an employee is entitled only to the salary of the position to which actually appointed, regardless of the duties performed. Thus, in a reclassification situation, an employee who is performing duties of a grade level higher than the position to which one is appointed is not entitled to the salary of the higher level position unless and until the position is classified to the higher grade and the person is promoted to it. 55 Comp. Gen. 515 (1975).

B-193690

In the present situation, the fact that AR 381-45 stated that a civilian assigned file procurement duties should be a GS-9 or above is not determinative of the outcome, since the duties of File Procurement Officer were in fact assigned to a GS-7 and not to a GS-9 in the Directorate of Security. The Army regulation cannot be looked upon as being a nondiscretionary administrative regulation or policy compelling Ms. Smith's position to be classified at a GS-9 level. Cf. Matter of Robert A. Remes, 54 Comp. Gen. 69 (1974).

Accordingly, the settlement issued by our Claims Division disallowing Ms. Smith's claim for a retroactive temporary promotion with accompanying back pay is sustained.


Deputy Comptroller General
of the United States